

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CRYSTALLEX INTERNATIONAL
CORPORATION,

Plaintiff,

v.

BOLIVARIAN REPUBLIC OF
VENEZUELA,

Defendant.

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C.A. No. 1:17-mc-00151-LPS

PUBLIC REDACTED VERSION

DATED: AUGUST 15, 2023

BANCO SAN JUAN INTERNACIONAL INC.'S
ATTACHED JUDGMENT STATEMENT

Pursuant to the Sixth Revised Proposed Order Establishing Sale and Bidding Procedures of October 2022 (“SPO”), D.I. 481, and Order dated August 8, 2023, D.I. 654, Banco San Juan Internacional Inc. (“BSJI”), as a holder of judgments seeking to be Attached Judgments,¹ submits this Attached Judgment Statement in accordance with the Special Master’s request.² D.I. 652.

BSJI seeks to enforce judgments and orders against Petróleos de Venezuela S.A. (“PDVSA”) and its operating subsidiary PDVSA Petróleo, S.A. (“PPSA”) rendered by The High Court of Justice, Business and Property Courts of England and Wales, Commercial Court (QBD) (“U.K. Court”).³ The U.K. Court ordered (i) PDVSA in 2020 to pay BSJI \$83,886,346, plus

¹ Capitalized terms used but not otherwise defined herein shall bear the meanings ascribed to such terms in the SPO, D.I. 481.

² As requested, BSJI is appending a signed certification as Exhibit A, and supporting documents as Exhibits B–E. BSJI will submit any further information that the Special Master may need in connection with evaluating this Attached Judgment Statement or recommending the amount of BSJI’s Attached Judgments to the Court as required by the SPO.

³ These judgments include (1) Judgment No. [2020] EWHC 2937 (Comm), dated November 4, 2020 and Orders dated December 3, 2020 against PDVSA (“**2020 U.K. Judgment**”), Ex. B; and

interest at contractual rates, and (ii) PPSA in 2021 to pay BSJI \$39,270,078, plus interest at contract rates. Ex. See B at B-55 to B-57, B-59 to B-60 (orders against PDVSA); Ex. C at C-21 (order against PPSA). Neither has paid BSJI and interest continues to accrue on the U.K. judgments. As of August 10, 2023, **PDVSA owes BSJI \$102,628,258**, as explained further below, plus interest that will continue to accrue, and costs and fees for BSJI's collection efforts.

BSJI is diligently prosecuting its action for recognition and enforcement of the U.K. judgments and orders in the District Court for the District of Columbia, *BSJI v. PDVSA and PPSA*, Case No. 1:23-cv-01263 (D.D.C), so that it can return to this District to participate in the sale process in accordance with this Court's Order of July 27, 2023. D.I. 646.

1. SUMMARY OF THE PARTIES' DISPUTE

The Parties' dispute arises from PDVSA's and PPSA's failure and refusal to pay back money that PDVSA borrowed from BSJI under their 2016 and 2017 Credit Agreements, and which PPSA guaranteed pursuant to the 2017 Credit Agreement.⁴

To recover amounts owed to it under both credit agreements, BSJI sued PDVSA in the United Kingdom in accordance with the exclusive forum selection clauses in the 2016 and 2017 Credit Agreements. Ex. B at B-3 § 4.6.1.1, B-11 ¶ 4; Ex. C at C-13 ¶ 22. The U.K. Court rendered judgments in BSJI's favor and ordered PDVSA to pay BSJI (i) US\$46,656,068 plus interest for BSJI's claim under the 2016 Credit Agreement, and (ii) US\$37,230,278 plus interest for BSJI's claim under the 2017 Credit Agreement, for a total of US\$83,886,346 plus interest.

(2) Judgment No. [2021] EWHC 1949 (Comm) and Order dated July 9, 2021 against PPSA ("**2021 U.K. Judgment**"), Ex. C.

⁴ In March 2016, BSJI, as "Lender," and PDVSA, as "Borrower," entered into the 2016 Credit Agreement. Ex. D, Credit Agreement dated Mar. 23, 2016. In April 2017, BSJI, as "Lender," PDVSA, as "Borrower," and PPSA, as "Guarantor," entered into a separate 2017 Credit Agreement. Ex. E, Credit Agreement dated Apr. 6, 2017.

Ex. B at B-55 to B-57, B-59 to B-60. PDVSA requested appeal, but the U.K. Court of Appeal refused its request. BSJI thus has a final, conclusive, and enforceable U.K. judgment against PDVSA, which PDVSA has yet to honor.

BSJI thereafter enforced PDVSA's liability against its guarantor PPSA under the 2017 Credit Agreement, but PPSA too refused to pay. In July 2021, the U.K. Court found PPSA liable and entered an order in favor of BSJI that PPSA pay a total of US\$39,270,078 plus interest under the 2017 Credit Agreement. Ex. C at C-21. PPSA did not appeal the judgment. Thus, BSJI has a final, conclusive, and enforceable U.K. judgment against PPSA, which PPSA has yet to honor.

Because PDVSA and PPSA willfully failed and refused to satisfy the U.K. judgments, BSJI is exercising its right to enforce the judgments against them in the United States. BSJI's action for recognition and enforcement of the 2020 and 2021 U.K. Judgments is pending in the District of Columbia. *BSJI v. PDVSA and PPSA*, Case No. 1:23-cv-01263 (D.D.C). BSJI has requested the D.C. Court to consider its action on an expedited basis given the ongoing sale process in this District.

2. BSJI'S COLLECTION EFFORTS

After obtaining final judgments from the U.K. Court, BSJI reached out to PDVSA and PPSA to collect on the judgments. However, both willfully failed and refused to satisfy the 2020 and 2021 U.K. Judgments. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. INITIAL AMOUNT OF APPLICABLE JUDGMENTS

The initial amount of the 2020 U.K. Judgment against PDVSA is \$83,886,346. Ex. B at B-56, ¶ 1, B-60, ¶ 1. In its recognition and enforcement action, BSJI is asking the Court to order PDVSA to pay this initial amount plus interest at the contractual rates ordered by the U.K. Court (detailed below in Section 5), which amounts to \$18,741,911.96 as of August 10, 2023. Together with the initial judgment plus interest, PDVSA owes BSJI \$102,628,257.96 as of August 10, 2023.

The initial amount of the 2021 U.K. Judgment against PPSA is \$39,270,078. Ex. C at C-21, ¶ 1. In its recognition and enforcement action, BSJI is asking the Court to order PPSA to pay BSJI this initial amount plus interest at the contractual rate ordered by the U.K. Court (detailed below in Section 5), which amounts to \$7,163,128.76 as of August 10, 2023. Together with the initial judgment plus interest, PPSA owes BSJI \$46,433,206.76 as of August 10, 2023.

4. REDUCTION IN JUDGMENTS RESULTING FROM COLLECTION EFFORTS

To date, both PDVSA and PPSA have willfully refused to honor the U.K. Court's judgments and orders against them. BSJI has not been paid at all as a result of any of its collection efforts. Therefore, there has been no reduction in amounts owed by PDVSA and PPSA. Should BSJI receive funds from PDVSA or PPSA, whether directly or by way of an enforcement action elsewhere, BSJI understands that any such sums recovered would reduce its right to recover here by a like amount.

5. POST-JUDGMENT INTEREST RATE

In its 2020 and 2021 U.K. Judgments, the U.K. Court awarded BSJI post-judgment interest at the contractual rates in the 2016 and 2017 Credit Agreements between and among BSJI, PDVSA, and PPSA.

In the 2020 U.K. Judgment against PDVSA, the U.K. Court ordered post-judgment interest at the rate of: (i) 8.25% per year on the portion of outstanding principal balance of the three (3) “Revolving Loans”; (ii) 9.50% per year on the portion of the outstanding principal balance of the two (2) “Term Loans” under the 2016 Credit Agreement; (iii) 11% per year on the balance for “Loan 1” under the 2017 Credit Agreement; and (iv) 10.8% per year on the balance for “Loan 2” under the 2017 Credit Agreement. Ex. B at B-56, ¶ 2, B-60, ¶ 2. The formula to calculate post-judgment interest requires multiplying the daily interest rate for each of these seven (7) loans by the number of days since December 3, 2020—the day on which the U.K. Court ordered PDVSA to pay—resulting in the post-judgment interest amount.⁵ Ex. B at B-2, § 4.4.1, B-57, B-60. BSJI is asking the D.C. Court to apply these interest rates and formula against PDVSA in its judgment and order.

In the 2021 U.K. Judgment against PPSA, the U.K. Court ordered PPSA to pay interest at the rate of (i) 11% per year on the balance for “Loan 1,” and (ii) 10.8% per year on the balance for “Loan 2” under the 2017 Credit Agreement. Ex. C at C-21, ¶ 2. The formula to calculate post-judgment interest requires multiplying the daily interest rate of these two loans, by the number of days since July 9, 2021—the day on which the U.K. Court ordered PPSA to pay—resulting in the post-judgment interest amount. Ex. C at C-2, § 4.4.1. BSJI is asking the D.C. Court to apply these interest rates and formula against PPSA in its judgment and order.

⁵ BSJI has used this formula in the Excel document that the Special Master requested, and which will be sent directly to the Special Master and his Advisors, as requested in the Special Master’s Letter of August 7, 2023. D.I. 652.

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